

Military Justice



Leader Brief

MJ LEADER BRIEF

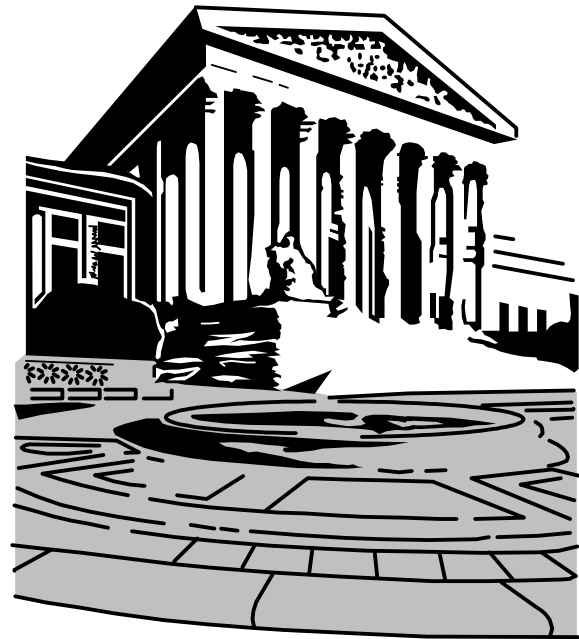
Training Objectives

- Compare Military & Civilian Justice Systems
- Discuss UCMJ Jurisdiction
- Discuss Inquiries/Interviews
- Compare Searches/Administrative Inspections
- Discuss Nonpunitive Administrative Actions
- Discuss Nonjudicial Punishment, Article 15
- Discuss Types of Courts-Martial
- Discuss Preferral and Forwarding of Charges
- Discuss Pretrial Restraint and Speedy Trial Rules
- Discuss Unlawful Command Influence

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Why do we have a Military Justice system?

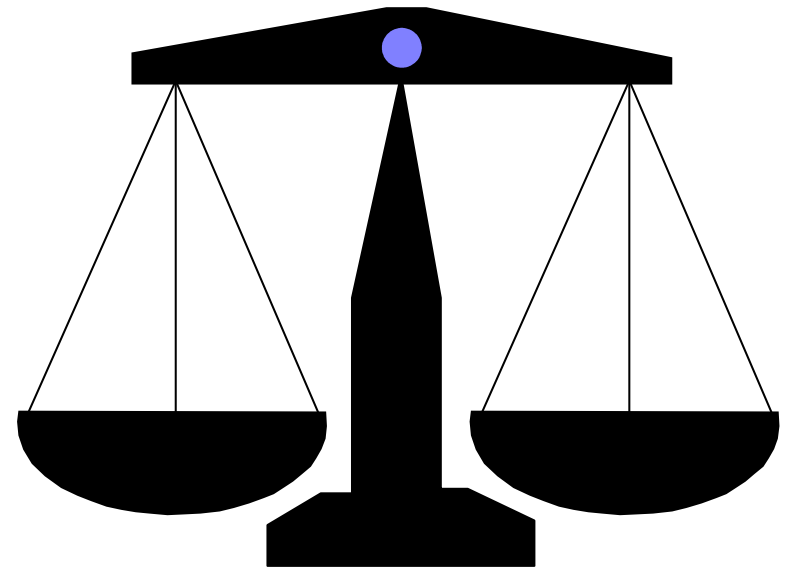
- Promote Justice
- Help Maintain Good Order and Discipline in the Armed Forces
- Promote Efficiency and Effectiveness in the Military
- Strengthen National Security



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Comparison of Military and Civilian Military Justice Systems

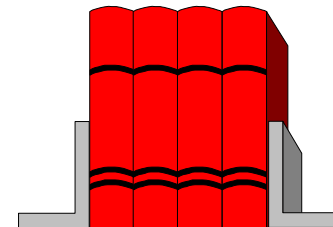
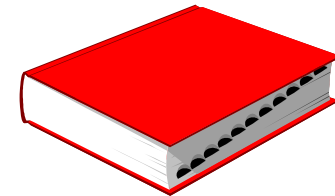
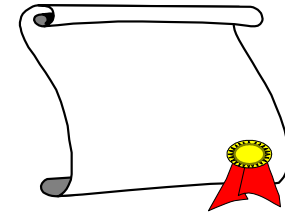
- Article 32 Hearing v. Grand Jury
- Right to Counsel
- Jury System
- Guilty Pleas



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Legal Sources of Military Justice

- US Constitution
- Uniform Code of Military Justice (UCMJ)
- Manual for Courts-Martial 2012 (M.C.M.)
- Army/Local Regulations
- Court Decisions



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UCMJ Jurisdiction

Over the Person:

- Active Duty Soldiers and Reservists while on AD
- Military Academy Cadets and Midshipman
- National Guard Personnel in Federal Service (Under Title 10, U.S.C.)
- Retirees
- Enemy Prisoners of War
- Others (Some Civilians deployed with units)

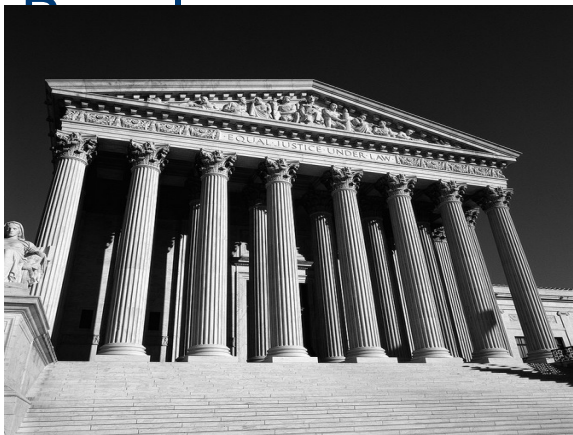
Over the Offense:

- Worldwide Jurisdiction
- Possible Concurrent Jurisdiction

Crimes under the UCMJ

Common Law Crimes

- Homicide
- Rape
- Larceny
- Robbery
- Assault and Battery



Military Crimes

- Disrespect
- Disobedience
- AWOL
- Conduct Unbecoming an Officer
- Conduct Prejudicial to Good Order and Discipline

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Suspect's Rights

Codified in Article 31 (b), UCMJ:

- To remain silent
- To be informed that any statement you make can be used against you
- To be informed of the nature of the suspected offense

Constitutionally Derived:

- Right to Counsel

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY: Title 10, United States Code, Section 3012(g)			
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.			
ROUTINE USES: Your Social Security Number is used as an additional alternate means of identification to facilitate filing and retrieval.			
DISCLOSURE: Disclosure of your Social Security Number is voluntary.			
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)		6. ORGANIZATION OR ADDRESS	
6. SSN	7. GRADE/STATUS		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
Section A. Rights			
The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. I do not have to answer any question or say anything.			
2. Anything I say or do can be used as evidence against me in a criminal trial.			
3. <i>For personnel subject to the UCMJ:</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.			
- or -			
<i>(For civilians not subject to the UCMJ):</i> I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.			
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.			
5. COMMENTS (Continue on reverse side)			
Section B. Waiver			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
12. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR	
22. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE			
Section C. Non-waiver			
1. I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			
DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE USAFA 2.01			

Key Personnel in the Military Justice System

- Commander
- Staff Judge Advocate
- Trial Counsel
- Defense Counsel
- Military Judge
- Panel Members (Jury)
- Legal Specialist



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Soldier's Rights

- Presumption of Innocence
- Right against self-incrimination
- Right against unreasonable search/seizure
- Fair and Impartial Hearing
- Right to Counsel (in most situations)
- Other Rights (discussed throughout this class)

Commander's Responsibilities

- **Maintain good order and discipline**
- Investigate reported offenses
- Enforce the Law
- Protect Soldiers' Rights
- Determine Disposition of Case



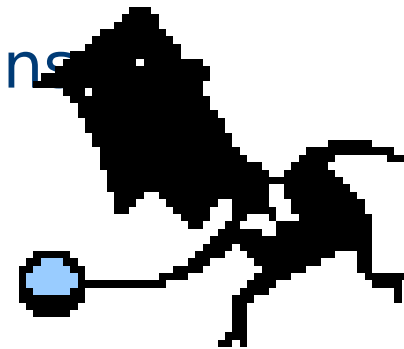
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Conducting Investigations

Discovery of Incident / Allegation:
Initial Considerations

Types of Inquires / Investigations

Conducting an Investigation



Discovery of Incident

Initial Considerations: Who/What/Where/V

- Who reported incident?
- What evidence supports allegation?
- Where did the incident occur?
- When did the incident occur?
- How credible is allegation?
- Finally, what type of Inquiry/Investigation is best?



Notify Trial Counsel Early

Types of Investigations

Preliminary Inquiry: RCM 303

- Required for any offense reported to the CMDR
- Not only investigation for serious offenses
- No formal requirements



AR 15-6:

- Usually initiated for complex offenses
- Requires appointment of Investigating Officer (JAG will prepare appointment letter)

MPI/CID:

- Serious offense

Discuss Which is Appropriate with Trial
Counsel

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Search and Seizure

- 4th Amendment protections
- Who can Authorize
- What is Probable Cause
- Exceptions to Authorization requirement
- Consent Searches
- Health & Welfare Searches (Inspections, Inventories, and Urinalysis)

4th Amendment Protections

“The right of the people to be secure. . . against **unreasonable** searches and seizures, shall not be violated, and no **Warrants** shall issue, but upon **probable cause** . . .”

Applies to Soldiers !!!

“**Unreasonable**” is the key term that defines what you can and can’t do and how you do it



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Authorizing a Search

Who Can Authorize a Search

“Competent Authority” based upon “Probable Cause.”

- Civilian Authority (Judge)
- Military Judges
- Military Magistrates
- Commander or Acting Commander*
(Authority cannot be delegated)

*Can ONLY authorize searches in unit area
(Includes unit's barracks or vehicles in unit area)

COMMANDER'S SHOULD NOT **CONDUCT** SEARCHES!

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What is Probable Cause?

Probable cause: “A ***Reasonable Belief*** that the person, property, or evidence sought is located in the place or on the person to be searched.” M.R.E. 315(f)

Reasonable Belief is formed from information that is :

- *Supported by verifiable evidence*
- *Timely*
- *Credible*

AND NOT based on:

- *Intuitive suspicion*

GET THE FACTS!!!!!!

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Authorization Not Required

- Item in Plain View (Officer legally present)
- Consent
- Incident to Lawful Arrest
- Exigent Circumstances (Destruction of Evidence; Hot pursuit; Medical Emergency)

Authorization Not Required

Consent

Consent: If a person ***voluntarily*** consents to a search of person or property under his/her control, no PC or warrant is required.

- Must exercise actual control or have apparent authority over property to consent.
- Consent may be withdrawn anytime
- Must be VOLUNTARY NOT COERCED

Authorization Not Required

Lawful Arrest

Investigative Detention/Frisks:

- During a ***lawful arrest***, limited searches of the person, and the area surrounding the person and subject to their control, may be performed without a probable cause determination.
- Why? To prevent an individual being arrested from reaching for a weapon or attempting to conceal or destroy evidence.



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Authorization Not Required Exigent Circumstances

'Those circumstances that would cause a **reasonable person** to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'

United States v. McConney, 728
F.2d 1195, 1199 (9th Cir.), cert.
denied, 469 U.S. 824 (1984).

Authorization Not Required Administrative Searches

A.K.A. Health & Welfare Inspections

Commanders have the right/duty to inspect Soldiers and equipment to ensure readiness, property accountability, order & discipline, and health & welfare of Soldiers

- An inspection must **NOT** be a cover (“**subterfuge**”) for an unlawful search
- Contraband found during a legitimate inspection ***may be used*** as evidence.

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Authorization Not Required Administrative Searches

Urinalysis Program (AR 600-85)

Types of Tests:

- Searches based on Suspicion (Need PC and prior authorization)
- Fit for Duty: Limited use only
- Inspections (Health & Welfare) ie. Random

Actions after positive results:

- Flag; Call CID; Schedule trip to TDS, Army Substance Abuse Program
- **Must** initiate separation (Ch. 14)
- See your Brigade paralegals for assistance

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Handling Evidence

EVIDENCE/PROPERTY CUSTODY DOCUMENT

[illegible]

Received 24 August 2001; accepted 1 August 2002

UDC 62-50

- Preserve Condition of Evidence
- Preserve Chain of Custody

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Disposition of Offenses

Command Considerations

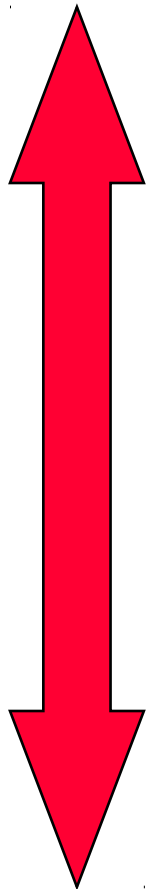
Once the investigation is complete, Commander must consider:

- How well is allegation ***Substantiated***
(Quality of Evidence Collected)
- What are Command ***Priorities***
(Speed, Good Order and Discipline, Justice)
- Are there ***Individual*** Soldier Considerations
(Duty Performance, Attitude/Motivation, Personal Problems)
- Are there ***Sentencing*** Factors
(Rehabilitation, Protection of Society, Preservation of good order and discipline, Deterrence - Specific & General)

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Disposition of Offenses

Commander's Options



- Take No Action (after investigating)
- Take Administrative Action
- Impose Nonjudicial Punishment (Article 15)
- Court-Martial

Administrative Actions

- Counseling (AR 600-20)
- Corrective Training (AR 600-20)
- Administrative Reprimands (AR 600-37)
- Bar to Reenlistment (AR 601-280)*
- FLAG (AR 600-8-2)
- MOS Reclassification (AR 600-200)
- Security Clearance Revocation (AR 380-67)
- Relief from Duties
- Adverse NCOER/OER
- Removal from Special Status
- Rehabilitative Transfer
- Admin Reductions (AR 600-8-19)*
- Admin Separation (AR 635-200)*

*Does not apply to officers

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Counseling Soldiers

The Key to successful administrative actions:

- Soldier must understand commander's expectations for future conduct.
- Oral counseling is not enough (Creates no record).
- Put it in writing and document misconduct/deficiency with specificity.
- DA 4856 (Counseling form)
 - Include requirements of AR 635-200, para. 1-16 and Part IV, Rehabilitation Results and Comments



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Counseling

“Magic Phrase” or “Silver Bullet”

“You are hereby counseled for the above indicated misconduct and/or unsatisfactory duty performance in accordance with AR 635-200, paragraph 1-16. Continued behavior of this kind may result in initiation of separation action to eliminate you from the Army. If you are separated for unsatisfactory performance, you could receive an Honorable, General, or Other than Honorable (OTH) Discharge. A General or OTH Discharge could severely prejudice you in civilian life. Additionally, an OTH Discharge could deprive you of many or all military and Veterans benefits to include forfeiture of all educational benefits. Any further misconduct or unsatisfactory performance may cause you to be eliminated without further counseling.”

Corrective Training

A.K.A.- **Remedial** Training

- Training or instruction must be directly related to the deficiency observed and oriented to correct that particular deficiency
 - Remedial PT
 - Bi-hourly check-in for FTR
- Training, NOT Punishment
- Must not be humiliating or degrading
- Leader should be present



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The Administrative Reprimand (AR 600-37)

Documents misconduct or poor performance in official files

- Formal Procedures (Soldier may Rebut in Writing)

Filing options

- Local File
- Permanent File (OMPF)
 - General Officer directed)



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The Bar to Reenlistment

- The Army desires to retain only those Soldiers of high moral character, competence, and demonstrated adaptability (AR 601-280).
- Directive 2012-03 - new mandatory grounds for a bar
- Initiation of administrative separation or bar to reenlistment required for:
 - Failure to make satisfactory progress in Army Weight Control Program.
 - 2 Consecutive APFT failures.
 - Removal for Cause from NCOES Courses.

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Administrative Separations (AR 635-200)

Soldier's Rights:

- Notice and Opportunity to Respond
- Attorney (Consultation / Board Representation)
- Hearing (Separation Board) if:

> 6 years of service

OR

Other Than Honorable Discharge
recommended

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Administrative Separations (AR 635-200)

Characterization of Service (Options):

- Honorable (No misconduct; Entitled to all benefits)
- General (Minor misconduct; Entitled to most benefits)
- Other than Honorable (Requires Board)
 - More serious misconduct
 - Forfeits most benefits

Standard of Proof

Preponderance of the evidence (More likely than not)

Types of Involuntary Separations

- **CHP 5** - Convenience of the Government
 - 5-8: Parenthood
 - 5-13: Personality Disorder
 - 5-17: Other designated physical or mental condition
- **CHP 7** - Defective/Fraudulent Entry
- **CHP 9** - Alcohol/Drug Abuse Rehab. Failure
- **CHP 11** - Entry Level Performance and Conduct
- **CHP 13** - Unsatisfactory Performance

Types of Involuntary Separations

- **CHP 14** - Misconduct
 - 14-12a: Minor Disciplinary Infractions
 - 14-12b: Pattern of Misconduct
 - 14-12c: Serious Misconduct
- **CHP 18** - Failure to Meet Body Fat Standards
- **CHP 19** - Qualitative Management Program

Military Justice for Leaders

End of Part I

Questions

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MILITARY JUSTICE FOR LEADERS



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Punitive Options

- Nonjudicial Punishment (Article 15)
- Summary Courts-Martial
- Special Courts-Martial
- General Courts-Martial



Nonjudicial Punishment

Article 15

- Purpose
 - Empower commanders to punish Soldiers for minor misconduct ***quickly*** and ***effectively***
 - Enhances ***good order*** and ***discipline***
- Function
 - Correct
 - Educate
 - Reform
- Who may impose
 - Commanders

*Absolute right to demand trial by court-martial

Article 15

Initial Responsibilities Of The Commander

Preliminary Investigation

- Whether Offense Was Committed
- Whether Soldier Was Involved
- Character & Military Record Of The Soldier

DA Form 2627 Or 2627-1

Notification Of Soldier

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All Article 15s Soldiers' Rights

- Remain Silent
- Examine Evidence
- Present A Defense
- Call Witnesses
- Demand Trial By court-martial
- Have An Appeal

Formal Article 15s have additional rights, see next slide

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Formal Article 15 Soldiers' Rights

- Consult With Counsel
- Have A Spokesperson
- Ask For An Open Hearing

Article 15 Hearing

Purpose: determine if the accused committed the offense and if so impose punishment

Commander's actions:

- Consider the evidence presented
- Decide guilt or innocence
- Impose appropriate punishment
- Explain rights to appeal

Burden of Proof: Beyond a reasonable doubt

Article 15 Punishment

- Admonishment/reprimand
- Forfeiture of pay
- Restriction
- Extra duty
- Reduction in rank
- Correctional custody (If installation has an approved facility)
- Amount of punishment depends on rank of accused and imposing authority

Article 15

Enlisted Types & Punishments Chart

TYPES	Summarized	Company	Field Grade
Forfeiture	No For 2 Mo.	7 Days Pay 1/2 Of 1 Mo.	
Reduction	No	1 Grade (E1-4) E5-6: 1 Gd	E4-1: Total
Restriction	14 Days	14 Days	60 Days*
Extra Duty	14 Days	14 Days	45 Days

*45 days max if combined with extra duty

Article 15

Officer Types & Punishments Chart

Company Grade

Written reprimand/
admonition

30 days restriction

quarters

month's pay for 2

Field Grade

Written reprimand/
admonition

30 days restriction

30 days arrest in

Forfeiture of ½ of 1

General Officer

Written reprimand/
admonition

60 days restriction, or

months

Article 15 Appeals

Procedure:

- Written Appeal (Some Commanders Permit Personal Appearance)
- Submitted Through Imposing Commander

Appellate Authority:

- Next Higher Level Commander

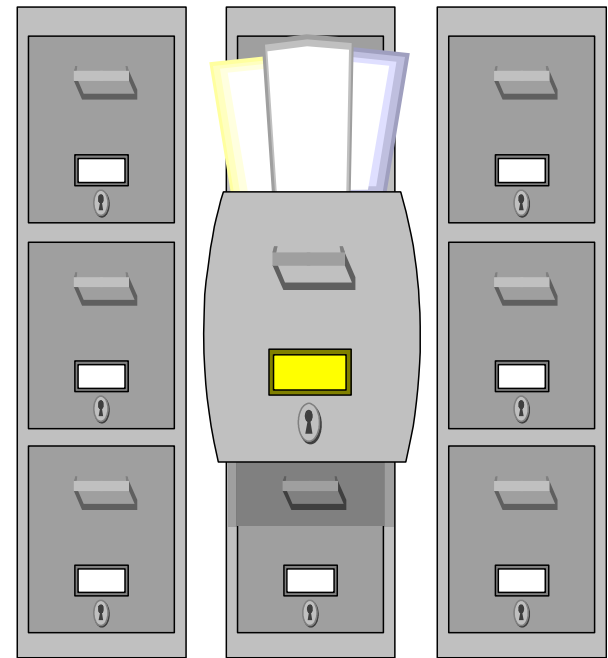
Article 15 Filing

Summarized:

- Kept in unit (local) file for two years or soldier transfers

Formal: Depends upon pay grade of accused

- E-4 and below: File locally
- E-5 and above: File in the OMPF



Courts-Martial

Types:

- Summary Court-Martial
- Special Court-Martial
- General Court-Martial

Summary Courts-Martial

Convening Authority:

Battalion Commander (LTC)

Soldier's rights:

No right to representation

May refuse SCM

Procedure/Jurisdiction:

- Summary courts officer (usually a MAJ)
- Can not try officers
- Rules of evidence apply

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Summary Courts-Martial

Maximum Punishment

- Forfeiture of 2/3 of 1 month's pay for 1 month

AND

- E-4 and below: confinement for 30 days, reduction to E-1
- E-5 and above: restriction for 2 months, reduction by 1 grade

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Special Courts-Martial

Convening Authority:

- Special Courts-Martial Convening Authority (SPCMCA)
 - Brigade Commander (COL)

Soldier's rights:

- Right to representation
- Officer/enlisted panel

Procedure/Jurisdiction:

- 3 members and/or Judge



Special Courts-Martial

Maximum punishment

- 12 months confinement (enlisted only)
- 2/3 forfeiture (pay only) for 12 months
- Reduction to E-1
- Bad conduct discharge (enlisted only)

General Courts-Martial

Convening Authority:

(GCMCA) General Courts-Martial
Convening Authority

- Division commander
(major general)

Soldier's Rights:

- Right to representation
- Article 32 hearing
- Officer/enlisted panel



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General Courts-Martial

Maximum punishment

- As authorized by law (death)
- Total forfeiture of all pay/allowances
- Reduction to E-1
- Bad Conduct/Dishonorable Discharge
- Dismissal (commissioned officers and commissioned warrant officers)

Prefer & Forward Charges

- DD Form 458 (Charge Sheet), and R.C.M. 307 provide instructions
Charge & Specification Format
- Oath & Personal Knowledge or Investigation
- Forward To SCMCA with recommendation

Pretrial Restraint Is Authorized Upon Probable Cause That:

- UCMJ offense has been committed
- Accused committed it

AND

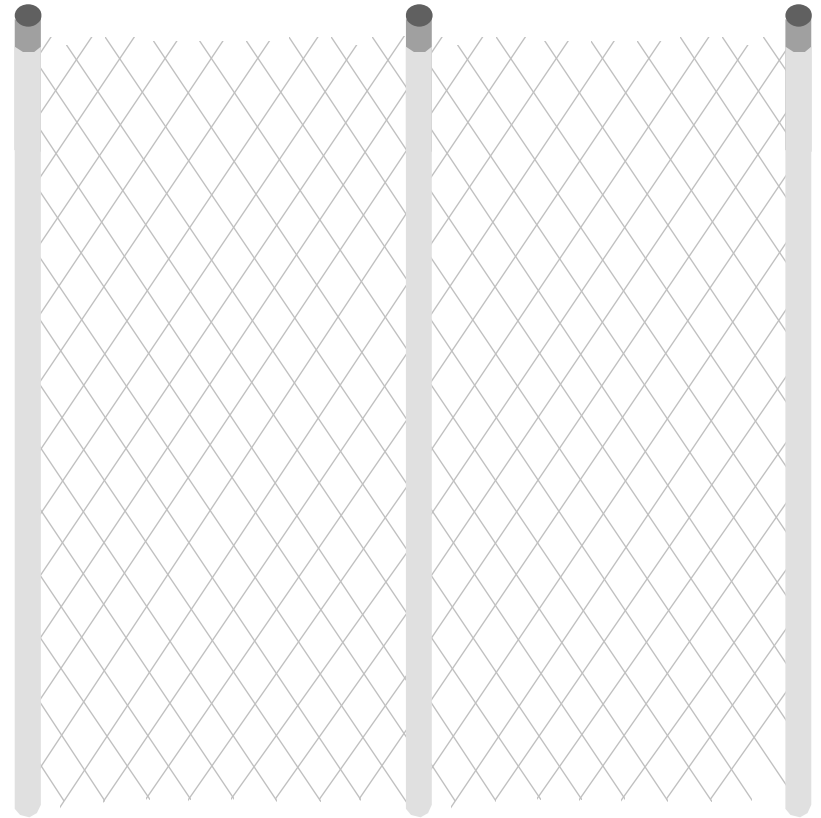
- Restraint is required to ensure the accused's presence OR to prevent foreseeable serious criminal misconduct

AND

- Lesser forms of restraint are inadequate

Forms Of Pretrial Restraint

- Conditions On Liberty
- Restriction (In Lieu Of Arrest)
- Arrest
- Confinement



Pretrial Confinement

Confinement pending BCD or GCM

Required when there is probable cause to believe the Soldier committed an offense, and it is reasonably foreseeable that:

- Soldier is a “flight risk” OR there is a threat of “serious misconduct”
AND
- Lesser forms of restraint are inadequate

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Speedy Trial Rules

R.C.M. 707

- The accused must be brought to trial within 120 days of:

1) Preferral of charges, **OR**

2) Imposition of pretrial restraint (RAC):

- Conditions on liberty (deny pass, pull leave) don't count.
- Administrative exception.
- Delays can be approved by the CA or MJ.

3) Entry onto active duty of Reserve personnel for trial.

Article 10

- If a Soldier is in pre-trial confinement the case **MUST** be **DISMISSED** if the government fails to act with "reasonable diligence." Meeting the 120 Speedy Trial Clock does not necessarily meet "reasonable

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diligence."

Unlawful Command Influence



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10 Commandments Of Unlawful Command Influence

- 1) Do not stack the panel, nor select nor remove court members in order to obtain a particular result in a particular trial.
- 2) Do not disparage the defense counsel or military judge.
- 3) Do not communicate an inflexible policy on disposition or punishment.
- 4) Do not place outside pressure on the judge or court members to obtain a particular decision.
- 5) Do not intimidate witnesses or discourage them from testifying.

10 Commandments Of Unlawful Command Influence

- 6) Do not order a subordinate to dispose of a case in a certain way.
- 7) Do not coach or mentor subordinates on military justice without talking to your legal advisor first.
- 8) Do not disparage the accused or tell others not to associate with him, and do not allow subordinates to do so, either.
- 9) Ensure that subordinates and staff do not commit unlawful command influence, inadvertently or not.
- 10) If a mistake is made, raise the issue immediately and cure with an appropriate remedy.

Key Takeaways

- UCMJ jurisdiction
- Conducting inquiries / interviews
- Searches / Administrative inspections
- Nonpunitive administrative actions
- Nonjudicial punishment, article 15
- Pretrial restraint
- Unlawful Command Influence

Questions

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